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April 19, 1993

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APR 19 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N. W.
Washington, D. C. 20554

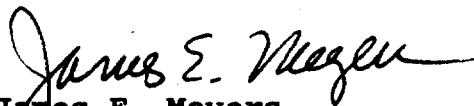
Re: Freeze Order Released April 1, 1993 (FCC 93-176)
and Stay Order Released April 9, 1993 (FCC 93-185)
in MM Docket No. 92-266

Dear Ms. Searcy:

On behalf of Encore Media Corporation, enclosed are an original and nine copies of its Petition for Reconsideration and/or Clarification of the above-referenced Orders.

Should additional information be necessary in connection with this matter, please communicate with this office.

Very truly yours,


James E. Meyers
Counsel for
ENCORE MEDIA CORPORATION

Enclosures

cc: William H. Johnson, FCC

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Before the
Federal Communications Commission
 Washington, D.C. 20554

APR 19 1993
 FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

In the Matter of)
)
 Implementation of Sections of)
 the Cable Television Consumer)
 Protection and Competition Act)
)
 Rate Regulation)

MM Docket No. 92-266

To: The Commission

PETITION FOR RECONSIDERATION
AND/OR CLARIFICATION

Encore Media Corporation ("Encore Corp.") through undersigned counsel hereby petitions the Commission for reconsideration and/or clarification of its Freeze Order¹ and Stay Order.² Encore Corp. owns and operates the cable television programming service known as "ENCORE", which commenced service in 1991 and which selects and packages motion pictures from the 1960s, 1970s and 1980s, exhibiting them principally to cable television subscribers. ENCORE is usually offered on cable systems on a "per channel" basis and/or packaged with "cable programming service", as those terms are used in Section 623 of the Cable Act of 1992 ("Cable Act" or "Act"), or as part of a package of per channel offerings.

¹Freeze Order, 58 Fed. Reg. 17530 (April 5, 1993).

²Denial of Rate Freeze Stay in MM Docket 92-266, FCC 93-185 (released April 9, 1993) ("Stay Order").

Prior to the Cable Act, a cable television programming service was traditionally referred to on the basis of its content. For example, the colloquial term "premium" was traditionally used to describe a particular type of service usually offered on a per channel basis. The text of the Cable Act, however, makes it clear that a video programming service is now categorized, for rate regulation purposes, according to the manner in which it is offered on a particular system, irrespective of the service's content. The Act establishes the following statutory categories of service offerings: Basic Service Tier ("BST"), Cable Programming Service ("CPS"), and Per Channel/Per Program ("PCPP"). The Act does not use the term "premium" anywhere in describing categories of service offerings.³

The Federal Communications Commission ("Commission"), however, uses the term "premium" in various places. in both

While Encore appreciates the Commission's clarification in its Stay Order that new CPS and PCPP services offered on an optional basis are exempt from the rate freeze, it notes that the Commission's interchangeable use of the colloquial term "premium" and the statutory term PCPP causes ambiguity and misunderstanding by cable operators as to the status of certain video programming in determining whether the manner in which such programming is offered or priced is subject to the rate freeze. Such use of the term "premium" ignores the fact that a traditionally "premium" service may be offered on any of the three statutory levels of service with very different rate regulation, and hence rate freeze, results.⁴ For example, a traditionally "premium" service if added to PCPP would not have to be factored into the average subscriber bill calculations, whereas such service would factor into such calculations if added to BST. The Commission's use of the term "premium" as a synonym for PCPP muddies this usage distinction.

Accordingly, ENCORE requests that the Commission be sensitive to terminology, in referring to video programming that is offered on a PCPP basis as "premium" or some other

⁴The Commission's Freeze Order is clear that the rate freeze applies only to those existing cable services that are subject to rate regulation under the Cable Act see Freeze Order at

industry colloquialism.⁵ Furthermore, in order to avoid misunderstanding by operators as to the status of certain video programming during the rate freeze, ENCORE requests that the Commission clearly indicate that it is how the cable operator offers programming (e.g., on a "per channel" a la carte basis) which determines whether the programming is subject to the rate freeze, and not, for example, whether the programming may have some traditional association in the marketplace with being a "premium" service.

Respectfully submitted,

ENCORE MEDIA CORPORATION

By Yvonne Bennett
Yvonne Bennett, Esquire
Manager, Business Affairs

By James E. Meyers
James E. Meyers
Its Attorney

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⁵Encore recognizes that the continued use of such colloquial terms during the transitional period of implementing the Act, may be helpful if limited to use as examples of types of services allowed in the different categories of service offerings.

CERTIFICATE OF SERVICE

I, Jeanne E. Butler, a secretary in the law offices of
Baraff, Koerner, Olender & Hochberg, P. C., do hereby certify